

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KEVIN G. WILSON and U.S. POSTAL SERVICE,
POST OFFICE, Stanford, CT

*Docket No. 01-2213; Submitted on the Record;
Issued September 4, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant developed right carpal tunnel syndrome causally related to factors of his federal employment.

On April 3, 2001 appellant, then a 47-year-old postal worker, filed a notice of occupational disease alleging that he developed right carpal tunnel syndrome due to the repetitive use of his right hand and wrist in the performance of duty. Appellant alleged that he was supposed to be working light duty but that the employing establishment ignored his medical restrictions and made him perform duties with his right hand and wrist beginning November 13, 2000.¹

An electromyogram and nerve conduction studies dated November 6, 2000 confirm the diagnosis of carpal tunnel syndrome. Appellant underwent a release of the right transverse carpal ligament, performed by Dr. Bruce Sprague, a Board-certified hand surgeon, on February 6, 2001.

In a January 23, 2001 letter, that was signed by Robert E. Olson, the maintenance manager for the employing establishment, appellant was informed that his request for light duty was denied because there was no available work within his stated medical restrictions.²

¹ Appellant sustained a right shoulder injury at work in April 23, 1999 that was accepted by the Office of Workers' Compensation Programs for right shoulder strain/sprain and right shoulder tendinitis. The employing establishment contends that appellant kept his right hand in his pocket and refused to use his right arm since that injury. On September 7, 1999 appellant sustained a right forearm strain and sprain to the right shoulder, which was also accepted by the Office.

² The record contains an October 2, 2000 letter from the employing establishment offering appellant a limited-duty position as a modified electronic technician in response to a work injury of September 14, 1999. Appellant was supposed to sit at a desk and use his left arm only to take parts out of a tub and put self-sticking labels on the identified parts. He was also directed to answer the telephone with his left hand only.

In a Form CA-20, attending physicians' report, dated April 2, 2001, Dr. Sprague diagnosed carpal tunnel syndrome and check marked a box indicating that the condition was caused or aggravated by an employment activity. He stated: "Repetitive usage of [the] hand is a know[n] cause of carpal tunnel syndrome." The period of total disability was listed as January 23 through March 25, 2001. Dr. Sprague approved appellant for a return to regular duty effective March 26, 2001.

In treatment notes dating from November 20, 2000 through March 22, 2001, Dr. Sprague indicated that appellant was seen for symptoms of lateral epicondylitis of the right elbow and right carpal tunnel syndrome. Following surgery, he approved him to return to work effective March 26, 2001.

In an April 13, 2001 letter, the employing establishment stated:

"[Appellant] was placed in the letter aisle casing with his left hand, however, he was so unproductive and disruptive to the other works that Mr. Noel had to have him removed from the letter aisle. [Appellant] was not utilizing his right hand nor did he utilize his left hand in any extensive repetitive motion."

"Furthermore, [appellant] has been on limited duty since April 23, 1999; he was finally placed on limited duty with no walking, sitting, light clerical duties only. During this period of time, [appellant] totally refused to [use] his right hand/arm placing his right hand in his pocket."

In a letter dated May 7, 2001, appellant was advised of the factual and medical evidence necessary to establish his claim for compensation based on an occupational disease.

In a statement received by the Office on June 1, 2001, appellant alleged that beginning April 23, 1999 the employing establishment refused to accommodate his work limitations of the right shoulder, which included no lifting over 10 pounds and no repetitive use of the right hand. He noted a history of repetitive use of hands and wrist during his previous jobs as a mailhandler and "MPE mechanic." He also noted that he injured his right shoulder during September 1999, while lifting panels doing the "SBCS routes."

In a decision dated July 18, 2001, the Office denied compensation on the grounds that appellant failed to establish that his diagnosed condition of carpal tunnel syndrome was causally to work factors.

The record indicates that appellant underwent extensor release surgery of the right elbow on October 23, 2001. His attending physician at that time, Dr. David B. Brown, approved him for a return to limited-duty status effective November 26, 2001 so long as he did not perform any repetitive activities with the right arm.

Appellant requested a hearing, which was held on February 28, 2002.

At the hearing appellant submitted additional evidence.

In a decision dated April 24, 2002, an Office hearing representative affirmed the Office's July 18, 2001 decision.

The Board finds that the case is not in posture for a decision.

A claimant seeking compensation under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence.⁴ The claimant must establish that he sustained an injury or condition in the performance of duty as alleged. The claimant also must establish that he has disability, causally related to the accepted employment injury or condition.⁵ As part of this burden, appellant must submit rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between her period(s) of disability and the accepted employment injury or condition.⁶

Proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter. The Office has an obligation to see that justice is done.⁷ While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁸ In this case, the Board concludes that the Office has not undertaken proper development of the record. The record indicates that appellant has at least three prior claims for the right shoulder and right forearm that are relevant to his alleged right carpal tunnel syndrome. The Board must, therefore, remand the case in order for the prior claims to be combined with this claim for a thorough review of appellant's medical condition. The Board specifically notes that the record is convoluted with respect to the dates of appellant's disability for the prior claims and his limited-duty assignments. Because appellant alleges that his right carpal tunnel syndrome is due in part to the employing establishment's refusal to accommodate his work restrictions from a prior accepted work injury, it is necessary to obtain a copy of all relevant documentation pertaining to his prior accepted claim.⁹

Additionally, the Board notes that appellant submitted a CA-20 form, attending physician's report supporting a causal relationship between his diagnosed right carpal tunnel syndrome and work factors. Although that report is not sufficiently reasoned to carry appellant's

³ 5 U.S.C. §§ 8101-8193.

⁴ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁵ *See Elaine Pendleton*, 40 ECAB 1143 (1989); *Daniel R. Hickman*, 34 ECAB 1220 (1983).

⁶ *See Bertha L. Arnold*, 38 ECAB 282 (1986); *Tracey Smith-Cashen*, 38 ECAB 568 (1987).; *see also* 20 C.F.R. § 10.110(a).

⁷ *Jerry A. Miller*, 46 ECAB 243 (1994); *Mark A. Cacchione*, 46 ECAB 148 (1994).

⁸ *Id.*

⁹ It appears that appellant has prior claims under at least the following numbers: 010377065 and 010368052. Although the Office relied on statements from the employing establishment that he did not use his right arm after April 1999, the Board notes that the Office accepted that appellant sustained a right shoulder injury while at work during September 1999. This cast doubts on the employing establishment's characterization of appellant's assigned work duties and should be clarified.

burden of proof on causal relationship, Dr. Sprague's opinion is not contradicted in the record. The Board, therefore, directs the Office to further develop the medical record.¹⁰ On remand the Office shall obtain an examination report from a qualified specialist addressing the nature of appellant's right hand and wrist condition in order to ascertain whether his right carpal tunnel syndrome is causally related to work factors or whether it is a consequential injury.¹¹

The decision of the Office of Workers' Compensation Programs dated April 24, 2002 is hereby vacated and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
September 4, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹⁰ See *Ezra D. Long*, 46 ECAB 791 (1995).

¹¹ A new condition or injury is considered a consequential injury if it is the direct and natural result of a prior compensable injury. An issue in this case is whether appellant's right carpal tunnel syndrome developed as a consequence of his prior accepted right arm or shoulder injuries.